

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

United States of America )  
 )  
 v. ) Docket No. 5:20-mj-00487-  
 ) HJB-1 )  
 Cody Donovan Smith, ) San Antonio, Texas  
 ) April 7, 2020  
 Defendant. )  
 \_\_\_\_\_ )

TRANSCRIPT OF VIDEO DETENTION HEARING  
BEFORE THE HONORABLE RICHARD B. FARRER  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT (BY VIDEO):  
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COURT RECORDER: FTR Gold

Proceedings reported by electronic sound recording. Transcript  
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1 (2:30 p.m.)

2 THE COURT: Okay, everyone. I think we're about ready  
3 to proceed. Just making sure we have our recording equipment  
4 online.

5 Okay. Are we all set, Amy?

6 THE CLERK: [Inaudible].

7 THE COURT: Sounds good?

8 THE CLERK: I can hear everybody.

9 THE COURT: Okay. All right. We'll start -- we'll  
10 start things off. I'll go ahead and call this case. Let me  
11 see here.

12 And, Amy, the CR number is the current case number?

13 THE CLERK: [Inaudible].

14 THE COURT: Oh, it's this MJ number?

15 THE CLERK: Uh-huh.

16 THE COURT: Okay. All right. Let's go ahead and call  
17 this case. So next up before the Court is case number  
18 SA:20-MJ-487, United States of America versus Cody Donovan  
19 Smith. We are set for an identity hearing and a detention  
20 hearing. We're doing this by video teleconference. And so

21 just to ensure that the record is clear, I have on the  
22 teleconference from the detention facility is Mr. Smith.

23 And, Mr. Smith, are you able to hear me and see me?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Thank you, sir.

1 And then also on the line we have Mr. Lara, who is  
2 Mr. Smith's counsel.

3 Mr. Lara, are you able to hear and see me?

4 MR. LARA: Yes, Your Honor.

5 THE COURT: Okay. And Ms. Garcia from the U.S.  
6 Attorney's office, can you see and hear me as well?

7 MS. GARCIA: [Inaudible].

8 THE COURT: Ms. Garcia, are you able to hear me and  
9 see me?

10 MS. GARCIA: Yes, I can. It's very [inaudible], Your  
11 Honor. I don't know why.

12 THE COURT: Okay. I'll try to -- I'll try to speak  
13 loudly. Does that help?

14 MS. GARCIA: [Inaudible].

15 THE COURT: I might just be too soft-spoken.

16 And then, also, we have pretrial services on the line. Is  
17 that right?

18 PRETRIAL OFFICER: Yes, Your Honor. Alejandro Cruz.

19 THE COURT: Okay. Great.

20 Mr. Lara, let me just start with you. First up, my  
21 understanding is that your client wishes to waive the identity  
22 hearing. Is that correct?

23 MR. LARA: Yes, Judge. We discussed it last week, and  
24 it was our decision to waive the identity hearing and move  
25 forward with the detention hearing.

1 THE COURT: Okay. So we're moving forward on  
2 detention hearing.

3 And then, as I mentioned at the outset, we're conducting  
4 this detention hearing by video teleconference because of the  
5 current coronavirus/COVID-19 outbreak and situation. And so I  
6 just want to confirm with you, Mr. Lara, that you've had an  
7 opportunity to discuss with your client what's involved with  
8 conducting this proceeding by video and that your client is  
9 comfortable with and does waive his presence at this hearing  
10 and also his right to be present here to confront any  
11 witnesses. Is that correct?

12 MR. LARA: Yes, Your Honor. We discussed it, as  
13 well [inaudible].

14 THE COURT: Okay.

15 MR. LARA: [Inaudible].

16 THE COURT: You're breaking up a little bit. Can you  
17 just go ahead and repeat that for me?

18 MR. LARA: Yes, Judge. We want to move forward with  
19 the detention hearing. We have discussed the issue of  
20 [inaudible].

21 THE COURT: Okay. Thank you.

22 And he's comfortable to waive his presence;  
23 is that correct?

24 MR. LARA: Yes, Your Honor.

25 THE COURT: Okay. All right. And then the intent

1 here is to proceed by proffer; is that correct, Ms. Garcia?

2 MS. GARCIA: Your Honor, we'd ask for detention -- to  
3 show notice of the pretrial services report prepared by  
4 Alejandro Cruz and also the indictment pending in the District  
5 of Wyoming, which I had hoped a copy was provided to the Court.

6 THE COURT: Yes. I have -- I have both of those  
7 matters, and I am considering them. I have them here on my  
8 screen as I'm talking to you all. So let me just -- if I can,  
9 just explain to Mr. Smith briefly.

10 So what we're doing, Mr. Smith, is addressing the question  
11 of bail or pretrial release in this hearing. You're entitled to  
12 the presumption of innocence on the underlying charges. And,  
13 obviously, nothing that takes place during this hearing is  
14 intended to or should be deemed to affect that underlying  
15 presumption of innocence. And, likewise, any findings I may  
16 issue are also not intended to affect that presumption.

17 The Bail Reform Act is the statute that applies to the  
18 determination that we're -- that we're going to investigate  
19 here today and the ruling that I'll make at the end of this  
20 hearing with respect to pretrial release or bail. The Bail  
21 Reform Act calls me to consider various factors in making my  
22 decision. And those include the nature and circumstances of the  
23 alleged offense, the weight of the evidence against the  
24 defendant, the history and characteristics of the defendant and  
25 also the nature and seriousness of the danger to others or the

1 community.

2 The government bears the burden in this hearing to show that  
3 you need to be detained between now and further proceedings. And  
4 in your case, at least as it stands now, that would be if you --  
5 whether you're detained until further proceedings are set in  
6 Wyoming or whether you can be released on bond pending those  
7 further proceedings. But Mr. Lara will be able to talk to you in  
8 much greater detail about how things will go forward in terms of  
9 what other proceedings may be conducted.

10 So with that, sort of, general background, I'll turn things  
11 over to the government. And, Ms. Garcia, if you'd like to  
12 proceed with your --

13 MS. GARCIA: Yes, Your Honor.

14 THE COURT: -- with your presentation.

15 MS. GARCIA: We proffer, Your Honor --

16 THE COURT: It's okay. Go ahead.

17 MS. GARCIA: Can I be heard?

18 THE COURT: Yes.

19 MS. GARCIA: I proffer the application affidavit of  
20 Jacob Olson, which was attached to a search warrant that was  
21 [inaudible].

22 THE COURT: Oh, I've lost you, Ms. Garcia. Hold on.

23 MS. GARCIA: [Inaudible].

24 THE COURT: Our connection -- our connection's tough.

25

1 I heard you -- just start over with the proffer. And then I  
2 lost you a bit.

3 MS. GARCIA: [Inaudible] proffer the affidavit of  
4 Agent Olson.

5 THE COURT: Okay.

6 MS. GARCIA: And in Count 1 [inaudible] when  
7 she was [inaudible].

8 UNIDENTIFIED SPEAKER: [Inaudible] hear?

9 THE COURT: Yeah. No. You're breaking up,  
10 Ms. Garcia. Hold on. I think we have a tough connection.

11 MS. GARCIA: [Inaudible].

12 THE COURT: Yeah. No. We're having a tough time  
13 hearing you. So why don't we try one more time, Ms. Garcia.  
14 You've --

15 MS. GARCIA: Am I heard at all or --

16 THE COURT: You are. And it sounds like your internet  
17 connection is a little bit dicey. And so you're coming in and  
18 out. Why don't we try one more time.

19 MS. GARCIA: Okay. I'll get closer. I proffer the  
20 affidavit of Agent Olson which accompanies his application for a  
21 search warrant in Florida to search the vehicle operated by Cody  
22 Smith when he kidnapped the victim and took her into Yellowstone  
23 Park. It outlines everything that happened between -- as relayed  
24 by the victim, and then the investigation that followed in  
25 securing a photograph of [inaudible] car as it



1 entered Yellowstone; and would tender calls, registration  
2 communication between he and the victim leading to the search  
3 in Florida, the vehicle in which he was operating.

4 And I have Agent Olson online as well, Your Honor,  
5 participating in this video conference, in the event that  
6 there's questions.

7 THE COURT: Okay. So I have the written proffer, at  
8 least the written materials that are proffered.

9 Mr. Lara, how do you -- how would you like to proceed?

10 MR. LARA: Judge, I had a few questions for Agent  
11 Olson [inaudible]. Not too many, just a few questions to ask  
12 him [inaudible] that affidavit.

13 THE COURT: Okay. Let's see if -- let's see if  
14 that -- if we can pull that off. Just don't be afraid to speak  
15 up. I think it's better to be loud than not heard.

16 Now, do we have Agent Olson on the line?

17 THE WITNESS: I'm here. Can you hear me okay?

18 THE COURT: Yes. I can hear you.

19 Mr. Smith, can you hear Agent Olson?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Mr. Lara, why don't you just  
22 proceed?

23 THE WITNESS: [Inaudible] excuse me. My computer just  
24 died, for whatever reason. So I'm on a cellphone. So I don't  
25 have the affidavit in front of me. So I'll try to do the best

Jacob Olson - Cross

1 I can. I apologize.

2 THE COURT: Okay. And let me just -- since you're  
3 going to testify -- so why don't I just go ahead and place you  
4 under oath. Will you please raise your right hand?

5 (The oath was administered)

6 THE COURT: Okay. Thank you

7 Mr. Lara, go ahead

8 MR. LARA: Sure.

9 CROSS-EXAMINATION

10 BY MR. LARA:

11 Q. First of all, I just wanted to -- Mr. Olson, can you hear  
12 me clearly?

13 A. Yes, sir.

14 Q. Okay. First of all, I just wanted to clarify, Mr. Smith  
15 was booked into custody. And are you aware whether or not he  
16 complied with the agents who arrested him on that day, in  
17 March?

18 A. Oh, per the arresting officers [inaudible].

19 Q. He didn't attempt to flee or run from the agents that were  
20 there on the -- on the scene?

21 A. I was -- I was told that he was very compliant.

22 Q. Okay. Now, I wanted to ask you a few questions. The  
23 affidavit, which was proffered to the Court, that was done by  
24 you in conjunction with officers from Idaho; is that correct?

25 A. It was drafted by me, using some additional information

Jacob Olson - Cross

1 from Rexburg, Idaho police department.

2 Q. Okay. And I just wanted to clarify a few things that I  
3 noticed in the affidavit, if you could answer some of these. Do  
4 you have any photographs of the alleged knife that was used in  
5 this incident?

6 A. [Inaudible].

7 Q. Is it a no?

8 A. As of right now, no. There was a knife located during the  
9 vehicle search. I have yet to see those photos yet.

10 Q. Okay. And are you aware that that was the type of knife  
11 described by the complainant?

12 A. I'm unaware because I haven't seen the photos yet.

13 Q. Okay. Now, I wanted to ask you, with respect to the  
14 information that [inaudible] by H.P. in this case, did you  
15 speak to H.P. directly?

16 A. Yes.

17 Q. Okay. In your conversations with H.P., as far as the  
18 initial encounter with Mr. Smith, was the knife in question --  
19 do you have information to suggest that that knife was used in  
20 direct threat to H.P.?

21 A. The information [inaudible] specific [inaudible] issue. So  
22 the knife was pulled out, brandished during the time that they  
23 were in the car from [inaudible] pocket of his pants. It was  
24 shown to the victim. And then looked at the victim with the  
25 knife [inaudible] center console [inaudible].

Jacob Olson - Cross

1 Q. Okay. And just to be clear, that has been reported at some  
2 point in your investigation?

3 A. Yes, sir.

4 Q. Okay. Now, let me -- let me follow with that. So was the  
5 knife brandished, as you described it -- does that -- did that  
6 happen before or after the [inaudible].

7 A. I'd have to go back and review exactly [inaudible]. But I  
8 believe --

9 Q. Okay. Had you taken -- were any photographs taken of any  
10 injury she may have sustained by the use of a knife or anything  
11 of that nature?

12 A. No.

13 Q. Okay. Now, according to the affidavit, these two,  
14 Mr. Smith and H.P., met on a dating app?

15 A. Correct.

16 Q. And is that something that's common for individuals at  
17 their age, approximately 19 and 18; to meet on these social  
18 media apps?

19 A. I would assume so. I'm outside that age group, so I can't  
20 [inaudible] say. But I believe [inaudible].

21 Q. Okay. And there's nothing out of the ordinary with someone  
22 of Mr. Smith's age getting on an app like that and meeting  
23 someone his age as well, right?

24 A. I don't see anything improper about that.

25 Q. Would you agree that -- and I'm not sure what your

Jacob Olson - Cross

1 experience is with respect to investigation -- you know, you've  
2 had the opportunity to investigate online predators?

3 A. Yes.

4 Q. Would you agree that this situation is completely different  
5 than something where -- let's just say, for example, someone  
6 groomed another individual to meet them, you know, and that  
7 type of nature of a case, right? This is a completely different  
8 case?

9 A. I'm not sure I agree to that.

10 Q. Okay. Do you -- with respect to the information that you  
11 obtained from H.P.'s cellphone, do you have a complete list of  
12 all the conversations she had with Mr. Smith?

13 A. I have a Tinder conversation that was obtained [inaudible]  
14 warrants -- Tinder application. I'd have to go back and review  
15 the cellphone for any text messages. But I believe the Tinder  
16 conversation [inaudible], and then there were some phonecalls.

17 Q. Okay. Now, the affidavit suggests that H.P. objected to  
18 going to the state -- the national park; is that right?

19 A. That's correct.

20 Q. Now, did she indicate in her conversations with you whether  
21 or not there was an opportunity for her to get out of the  
22 vehicle?

23 A. You're going to have to be more specific about your  
24 question. I apologize. I don't know exactly what you mean.

25 Q. Sure. Just [inaudible]. It's a simple question. Did she

Jacob Olson - Cross

1 [inaudible] -- in your conversations with H.P., that at any  
2 point there was an opportunity for her to remove herself from  
3 the Honda Civic?

4 A. Her indications were that she asked him to take her back to  
5 her apartment. He would not take her back [inaudible], and then  
6 proceeded to go to Yellowstone National Park where cellphone  
7 service and such became way more -- the phone was taken during  
8 that time as well.

9 Q. Did she indicate [inaudible] out of her hand? How  
10 did -how did he [inaudible]?

11 A. From what I -- from what I understand, she was holding the  
12 phone, and he took it from her.

13 Q. Did he use force against her to take that phone?

14 A. I don't know what you mean, sir. He took the phone from  
15 her. You know, he didn't punch her before he did it, but he  
16 took the phone from her. She was in [inaudible]. He was  
17 driving.

18 Q. Okay. And that's what I'm getting at. I was looking at the  
19 affidavit. It didn't have any specific with respect to how did  
20 it happen, when did it happen. It just says, the phone was  
21 taken. Right?

22 A. Okay.

23 Q. And that's the point. I just wanted to find out the nature  
24 of how he obtained the phone.

25 So shortly after that, they arrived at a camp site; is that

Jacob Olson - Cross

1 right?

2 A. I'm not sure about "shortly." A couple of hours.

3 Q. Okay. Now, in the affidavit it indicates that she removed  
4 herself from the vehicle and got into the tent; is that right?

5 A. No.

6 Q. Now, could you explain that to me then?

7 A. Yeah. She was able to get out of the vehicle when they got  
8 to the camp site. She was able to grab her phone at that  
9 point. She went into a women's restroom, approximately the  
10 third stall down, and then he followed her into the women's  
11 restroom, stood outside the stall.

12 Q. And the reason I ask is, it's not in the affidavit, so I  
13 wasn't aware of those details.

14 A. Okay.

15 Q. I was simply going based on the affidavit, which suggests  
16 that she arrived at the location, got out of the vehicle and  
17 entered the -- and entered the tent.

18 A. Okay.

19 Q. So when she's in the tent, she has her phone;  
20 is that right?

21 A. No. He ended up keeping the phone on his side of the tent  
22 for a portion of [inaudible].

23 Q. Okay. And then -- and did you -- did you verify whether or  
24 not she had an opportunity to send any messages while she  
25 [inaudible] or at the location of the camp site?

Jacob Olson - Cross

1 A. Yes. There's no -- there was no cellphone service there  
2 for her, or at least that's what [inaudible] her. So she  
3 wasn't able to get messages out till the following day.

4 Q. Okay. And were there any other individuals in that camp  
5 site where Mr. Smith and H.P. were located in that tent? A.  
6 She was unaware. When they arrived, it was very dark, late at  
7 night, and she couldn't see anybody else. [Inaudible] to keep  
8 her voice down because he said there was other people. Q.  
9 Okay. And, again, would you agree with me that the information  
10 that you're providing the Court today is based on the  
11 information that was given to you from H.P., right?

12 A. Yes.

13 Q. So would you agree with me that the strength of the  
14 information that you're providing is, again, based on the  
15 information that was provided to you through another party in  
16 this case, correct?

17 A. It was provided by H.P. I don't understand the question. Q.  
18 So with respect to the information that the Court has to make  
19 their decision as to the offense itself, that information was  
20 provided primarily from H.P.?

21 A. What specific information are you -- the question that you  
22 just asked, the answers to those questions were provided by  
23 information given from H.P., correct.

24 Q. Okay. That's all I wanted to know, is whether or not the  
25 information that we're giving the Court, facts that we're



Jacob Olson - Cross

1 giving the Court are, again, provided from H.P. And that's all  
2 I wanted.

3 So would you agree with me that these specific types of  
4 cases are -- been categorized as a he said/she said type of  
5 case?

6 A. I don't particularly agree with categorizing them as that,  
7 no.

8 Q. And why is that?

9 A. Because I believe that the initial evidence that we've gone  
10 into in regards to [inaudible] search warrant [inaudible] and  
11 things help provide more evidence towards [inaudible].

12 Q. Now, that evidence that you just indicated right now, do  
13 you have that evidence? Do we have that evidence in front of  
14 [inaudible]?

15 A. You have an affidavit, I believe. I don't think  
16 discovery's been provided yet.

17 Q. Okay. So the only information that the judge has right now  
18 to analyze these facts are provided from H.P., right? Not  
19 including the information that was [inaudible], right?

20 A. Okay. I'd have to see which affidavit -- see the affidavit  
21 [inaudible] to see if there --

22 Q. Okay.

23 A. -- from [inaudible].

24 Q. Okay. Now, let me just make sure I have this straight.

25 The crime was reported on September the 10th, 2019, correct?

Jacob Olson - Redirect

1 A. Negative. It was provided September 8th.

2 Q. Okay. And I'm just clarifying that because the affidavit  
3 would suggest that she provided district court with the agents  
4 on -- excuse me -- not the agents but the officers from the  
5 police department on September [inaudible] in the probable  
6 cause section on Page 2 of the affidavit.

7 A. She did a follow-up with that agency on September 10th, I  
8 believe. September 8th, minutes after returning to town, her  
9 roommates pick her up, and they went directly to the Rexburg  
10 Police Department where [inaudible].

11 Q. Okay. Thank you for clearing that up. [Inaudible] of the  
12 affidavit.

13 Now, if you know, do you know if Mr. Smith attempted to  
14 contact or threaten H.P. after the alleged incident?

15 A. There is no report of that.

16 MR. LARA: I have no further questions for the agent,  
17 Your Honor.

18 THE COURT: Okay. Thank you.

19 Ms. Garcia, do you have anything you'd like to follow up  
20 on?

21 MS. GARCIA: Yes, Your Honor. I do.

22 REDIRECT EXAMINATION

23 BY MS. GARCIA:

24 Q. In regard to the question posed to you whether there were  
25 any photographs of injuries as a result of the knife, you said

Jacob Olson - Redirect

1 no. However, will you describe to the Court any photographs  
2 where there is displayed injury to the victim?

3 A. [Inaudible].

4 Q. Did you hear me?

5 A. [Inaudible].

6 THE COURT: Why don't you repeat that question?

7 THE WITNESS: [Inaudible].

8 BY MS. GARCIA:

9 Q. Agent Olson.

10 A. Yes, ma'am.

11 Q. Can you hear me?

12 A. Yeah. I can hear you now. [Inaudible].

13 Q. Agent Olson, you were asked questions about any injury as a  
14 result of the knife that Mr. Smith had. And you said there  
15 were none. Can you describe to the Court any injuries that you  
16 observed in photographs of the victim?

17 A. Yes. The victim has photos of a small abrasion on her  
18 neck, some marks on her breast, and then reported some initial  
19 scratches on her stomach. She also has multiple photos of a --  
20 I don't remember the name of it, but the muscle between the top  
21 bend in your thumb was torn.

22 THE COURT: Okay. Anything else, Ms. Garcia?

23 MS. GARCIA: Nothing else, Your Honor. Thank you.

24 THE COURT: Okay. Do you have anything further that  
25 you'd like to put before the Court, Ms. Garcia, apart from

Jacob Olson - Redirect

1 arguing?

2 MS. GARCIA: Just in regard to -- if the agent will  
3 please describe the area that she's in.

4 BY MS. GARCIA:

5 Q. It's not like there's a lot of towns around there, is  
6 there? Is it woodsy? Houses? Basic [inaudible].

7 THE COURT: Were you able to hear that, Agent Olson,  
8 that question? We have a pretty dicey connection, folks. Can  
9 you hear me, Agent Olson?

10 MS. GARCIA: [Inaudible].

11 THE WITNESS: Is this [inaudible]? Yes.

12 MS. GARCIA: That's a lot [inaudible].

13 THE WITNESS: I'm sorry.

14 BY MS. GARCIA:

15 Q. [Inaudible] Would you please describe the environment in  
16 which the victim was taken as far as being woodsy, houses?  
17 What is it?

18 A. Yes. The area where they left in Rexburg -- they left Idaho  
19 and drove toward Montana and then entered the west section of  
20 Yellowstone and then went into a campground within the  
21 interior of the park. And it's very remote; no cellphone  
22 service; really dark; obviously, big woods of Montana and  
23 Wyoming.

24 THE COURT: Okay. Anything --

25 MS. GARCIA: Other than that, Your Honor, nothing

1 further.

2 THE COURT: Okay. Mr. Lara, any further questions?

3 MR. LARA: No further questions for the agent, Judge.

4 THE COURT: Okay. Thank you, Agent Olson. You may -you  
5 may be excused.

6 Anything else that you'd like to introduce, Ms.  
7 Garcia? Other evidence?

8 MS. GARCIA: Nothing for the government, Your Honor.

9 THE COURT: Okay. Mr. Lara, do you have any evidence you'd  
10 like to proffer or otherwise introduce?

11 MR. LARA: Yes, Judge. Yesterday afternoon we sent  
12 over to the Court a few affidavits as exhibits. Exhibit Number  
13 1 is detailed information from Bank of America for Tammy Smith  
14 --

15 THE COURT: Okay.

16 MR. LARA: -- Cody Smith's mother. It's a mortgage  
17 for her home.

18 THE COURT: I have that.

19 MR. LARA: Exhibit Number 2, Judge, the Court has the  
20 flight itinerary from Florida to Wyoming district court for Mr.  
21 Cody Smith that was purchased by Tammy Smith to make sure that  
22 he can arrive for his Wyoming court date should the Court grant  
23 him a bond.

24 Defendant's Exhibit Number 3 are taxes from Cody Smith for  
25 2018, the most recent taxes that he has, provided to the Court

1 to show that he has been employed prior to this incident.

2 Exhibit Number 4 are documents from Cody Smith of his  
3 enlistment with the Navy, Your Honor. That was provided in  
4 Exhibit Number 4. And that's exactly where he was apprehended  
5 on this matter.

6 Exhibits 5 through 11, those are a series of affidavits and  
7 letters from the family. I'm not sure if the Court had an  
8 opportunity to read those. They do provide information from  
9 Tammy Smith, Donovan Smith, his father, as well as his  
10 grandfather from his maternal side and grandmother from  
11 maternal side, as well as his grandmother from the paternal  
12 side, all vouching for his character as well as willingness to  
13 be a third-party custodian in this matter as well as providing  
14 collateral for the Court should they grant a bond.

15 Exhibit Number 10 and 11, Your Honor, are letters from  
16 family friends attesting to his character; provided the Court  
17 that as well.

18 And then, lastly, we have Exhibit Number 12, which is a  
19 copy of his passport, which his mother has brought here to  
20 Texas. She's presently sitting alongside of me in my office,  
21 Your Honor. She brought the passports. The Court may find, as  
22 [inaudible] of the bond, he would surrender that as part of the  
23 -- of that. So, again, it's Exhibit Number 12, Your Honor.

24 Those are the exhibits that we ask to present to the Court  
25 and submit as evidence on his behalf.

1 THE COURT: Okay. Thank you, Mr. Lara. I do have all  
2 those here in front of me and have them on the screen right now.

3 Okay. Anything else, Mr. Lara, to introduce into evidence  
4 before we get into argument?

5 MR. LARA: No, Your Honor. I believe that's all we  
6 had in terms of exhibits for evidence, Judge [inaudible].

7 THE COURT: Okay. Ms. Garcia, do you want to begin  
8 with your argument for detention?

9 MS. GARCIA: Yes, Your Honor. With respect to the  
10 affidavits provided by Mr. Lara, it shows that the defendant  
11 has a lot of great family support. However, there seems to be  
12 this notion that there's a misunderstanding about something.  
13 When we're dealing with victims, especially victims who have  
14 been kidnapped, sexually abused in any way, there's no  
15 misunderstandings, especially when there's evidence to support  
16 injuries and documentation by photographs, for example,  
17 photographs of the vehicle entering Yellowstone Park, and  
18 everything is confirmed as to what the victim reported. So  
19 there's no misunderstanding.

20 And in this particular case, kidnapping carries a penalty  
21 of up to life, Your Honor. And the fact that he brandished the  
22 knife, he showed it to her [inaudible] as a form of  
23 intimidation. These are acts that [inaudible] do not warrant  
24 one being released on bond.

25

1 The fact that the defendant -- the victim repeatedly told  
2 him no, not to take her and he [inaudible] Yellowstone. And he  
3 had his tent already set up there. That's all premeditated.  
4 They wouldn't accept the [inaudible] self-prove [inaudible]  
5 despite the praises that he receives from his family.

6 This is the only incident that we're aware about. We don't  
7 know this happened to anyone else [inaudible] has. But the  
8 fact that this [inaudible], it did happen.

9 Now, with reference to the affidavits, the mother -- the  
10 mortgage shows that she's only been in that house for one year  
11 and four months. Therefore, there's little equity in that  
12 house.

13 As far as the ticket itinerary, you can buy a ticket.  
14 Whether he'd get on that plane and show up, that's a different  
15 matter. So it's the government's position that the best  
16 decision here is to keep Mr. Smith in detention, especially in  
17 light of some of these affidavits describing his -- describing  
18 him as an adventurous person who was traveled to Cuba,  
19 South Africa, Australia. Then there is a chance of flight  
20 risk, Your Honor. So based on a chance of flight risk and the  
21 fact that he is a danger [inaudible].

22 THE COURT: Okay. We just missed that last part. You  
23 said -- you were just summing up that you're requesting  
24 detention based on flight, and then you cut out. Why don't you  
25 just repeat that part.



1 MS. GARCIA: And danger to the community as well, Your  
2 Honor, based on the facts and circumstances of this case.

3 THE COURT: Okay. Thank you, Ms. Garcia.

4 Mr. Lara?

5 MR. LARA: Yes, Your Honor. First of all, Judge, I want  
6 -- I want to just communicate that I don't believe that the  
7 government has even come close to providing a preponderance of  
8 the evidence standard on the flight risk issue, number one.

9 Number two, on the dangerousness issue, Judge, I think  
10 they've fallen completely short of providing clear and  
11 convincing evidence to suggest that he's a danger to the  
12 community.

13 Now, I wanted to address some of the factors that the Court  
14 would consider, this Court is clearly aware of, 3142(g), to  
15 determine whether or not detention is warranted here. In  
16 looking at the affidavits and the nature of the offense  
17 charged, that seems to be the majority of what the government's  
18 arguing. The government is essentially just arguing the nature  
19 of the offense. That's what they're expecting the Court to make  
20 their decision on, in saying, This is the type of offense that  
21 we don't let people out on bond for.

22 Now, I would -- I would -- my position, Judge -- and,  
23 again, a majority of the information that the Court has to  
24 determine is based on an affidavit which was provided from an  
25 individual -- again, it's a he said/she said type of situation,

1 Your Honor. And that's what the Court is being asked from the  
2 government to make its ruling upon.

3 Now, if the Court looks at the weight of evidence against a  
4 person, Mr. Smith is presumed innocent. And the Court is aware  
5 of that and has mentioned it, as well. He has a presumption of  
6 innocence. And that carries a lot of weight, Your Honor.

7 If we look at the history and characteristics of the person  
8 here, the affidavit provided by Mrs. Smith, Tammy Smith,  
9 including [inaudible] to the Court, that not only is she  
10 willing to sign as a third-party custodian. She is going to put  
11 up her own property; not only the home, whatever property she  
12 needs to put up, in order to make sure that her son, her 20-  
13 year-old son gets out on bond, she is willing to do that  
14 because she knows -- again, she knows that -- who her son is.  
15 She knows that he is going to comply with every condition this  
16 Court would impose.

17 Not only that, Your Honor, if you look at the history  
18 and characteristics of this individual, we're talking about  
19 Mr. Smith here who recently was [inaudible].

20 (Cellphone ringing loudly)

21 MR. LARA: -- as a medic in the Navy [inaudible], to  
22 the point [inaudible] where he was, was in the final stages  
23 of completing that training. Mr. Smith has no intention of  
24 leaving this country, has no intention of fleeing from the  
25 United States and not presenting himself against these false

1 accusations.

2 Now, again, there's a time and there's going to be the  
3 place for us to argue that, Your Honor, with respect to the  
4 elements of the case. We just ask the Court to consider all  
5 the factors this Court will consider in making a determination  
6 based on, again, his mother standing behind him. She has at  
7 least a hundred thousand dollars equity in that home. Her -his  
8 grandfather is standing behind him. He's also willing to sign  
9 as a third-party custodian. His grandmother is also willing to  
10 stand and sign as a third-party custodian. They have strong  
11 roots to Florida, Your Honor.

12 And clearly, the family supports this young man because  
13 he's done nothing but be an outstanding, again [inaudible].  
14 Now, when the Court looks at employment history, we provided  
15 the Court his history, 2018. He was in high school prior to  
16 that. So there wasn't much time to [inaudible] his job. His  
17 father has clearly indicated, should he be given a bond, he's  
18 going to work with him. And if he's working with his father,  
19 that means that he would be an individual that's going to be  
20 supervising him throughout the day should the Court allow him  
21 to work during the period awaiting for an appearance in court  
22 in Wyoming.

23 Now, when we look at the financial resources -- now, the  
24 government made -- indicates that he's a flight risk  
25 [inaudible] South Africa. Judge, that doesn't hold [inaudible]

1 willing to submit to the Court and surrender his passport,  
2 he's not going to travel anywhere. Much less, with the  
3 situation that we have right now with COVID-19, that there are  
4 travel restrictions. He's not going anywhere. He's going to be  
5 home. He's going to be with his family.

6 And the Court can further even apply house arrest. If that  
7 wasn't enough, the Court could [inaudible] GPS. In the  
8 pretrial services report the pretrial services officer also  
9 indicated that the mother is willing to install a landline and  
10 do anything this Court would ask, to make sure someone is  
11 supervising him at all times. Is it necessary? I don't believe  
12 so. But that's to the extent that they're willing to go to  
13 assure that there are some conditions that can be given to  
14 this individual.

15 Now, the length of the residence in his community in  
16 Florida, he's lived there all his life. All his family lives  
17 there. And, Judge, he is not going anywhere. We have  
18 affidavits that support that. Friends of the family, community  
19 ties, again, he has people that are looking out for him there  
20 in Florida where his family resides. He's not a flight risk.

21 Now, past conduct, he has no criminal history. He's never  
22 been in trouble before. There is no indication that he's a  
23 threat to anyone. The [inaudible] officer, the agent testified  
24 that there is no evidence to support that he attempted to reach  
25 out to this individual; that he attempted to speak to this

1 individual after these [inaudible] have occurred.

2 Again, if we were in a situation where this man was a  
3 stalker, where he was looking for this individual, possibly  
4 I'd understand, at least [inaudible]. But Mr. Smith has made  
5 no contact with this individual. He was, again, in the Navy,  
6 doing what he wanted to do as a medic.

7 And, Your Honor, if the record -- he doesn't have a  
8 record, so we can't really provide the Court assurances of his  
9 past appearances in court. But I don't think that should go  
10 against him simply because he has [inaudible]. Now --

11 THE COURT: Mr. Lara, can I just ask you -- just break  
12 down for me what happens practically next in this case. If  
13 he's set for proceedings, he's either going to be in custody  
14 and transported or he'll go back to Florida and have a court  
15 date in Wyoming; is that right? Is that what's going to happen  
16 next for him?

17 MR. LARA: I'm sorry. Were you asking me,  
18 Judge? THE COURT: Yes.

19 MR. LARA: Okay. So what would happen if he's not  
20 granted a bond in this situation, they would take him out to  
21 Wyoming. At Wyoming they would either attempt another  
22 detention hearing pending the resolution or the scheduling  
23 order from the Court. If he's granted a bond, he would go out  
24 to Florida and await a scheduling order. We already have an  
25 attorney out there in Wyoming. He's been retained to make sure

1 that he is going to comply with all settings out there in  
2 Wyoming.

3 So if he gets a scheduling order, which is typically, in  
4 situations like this [inaudible], Your Honor -- it's typically  
5 a month and a half when it's out of state, usually when they  
6 set hearings [inaudible]. Judge, with the situation right now  
7 with the virus, I don't know how soon that would be set.  
8 However, it could be even two months, three months down the  
9 line before he gets another hearing, another setting. And  
10 that's what -- that's what I'm afraid of, Your Honor.

11 THE COURT: Okay. Well, you know, what I wanted to  
12 clarify just for the record and also for Mr. Smith's benefit is  
13 that if he were to be detained, he would have an opportunity to  
14 revisit that decision with the Court in Wyoming, the Court that  
15 has jurisdiction over the charged offense. And that's your --  
16 that's your understanding as well, it sounds like, Mr. Lara; is  
17 that right?

18 MR. LARA: Yes, Your Honor. That is --  
19 that is correct.

20 THE COURT: Okay. And I interrupted --

21 MR. LARA: Just --

22 THE COURT: Yeah. I interrupted you. Please go  
23 ahead and finish up.

24 MR. LARA: No, Judge. Just looking at our position,  
25 Judge, we believe that there are [inaudible] conditions

1 available which would reasonably assure his appearance for all  
2 judicial hearings and which would adequately protect the  
3 public, Your Honor. And that's the standard here, of would it  
4 reasonably assure. There is not a requirement that it  
5 absolutely guarantees. I believe with the affidavits provided,  
6 that would [inaudible] hearings in the state of Wyoming, Your  
7 Honor.

8 We've also provided a release to a third-party custodian,  
9 surrender of his U.S. passport, home detention if necessary,  
10 GPS monitoring if necessary, any other conditions the Court  
11 would impose.

12 And we, frankly, Judge, believe that the only credible  
13 argument from the government here is the nature of the offense.  
14 The government argues for detention. We believe detention is  
15 insufficient to overcome his presumption of innocence and the  
16 Court's obligation under the Bail Reform Act to release  
17 [inaudible] on the least restrictive combination of conditions.  
18 We believe we've presented the Court with sufficient amount of  
19 conditions that can be [inaudible] to assure that he's not a  
20 flight risk [inaudible] and, two, that he is not a danger to  
21 anyone if he's being supervised 24/7, GPS, anything  
22 [inaudible].

23 THE COURT: Okay.

24 MR. LARA: And that's all.

25 THE COURT: Thank you.

1 Ms. Garcia, anything to follow up on?

2 MS. GARCIA: Yes, Your Honor. Just as to -- the Navy  
3 thing is recent. We believe that all began the end of March.  
4 So it's not like he was in the Navy in September when this  
5 offense was committed.

6 THE COURT: Okay.

7 MS. GARCIA: And the defense [inaudible] saying it's a  
8 he said/she said. No. It's she said. And what she said is  
9 supported by evidence, supported by injury to her person,  
10 supported by the photographs, supported by records, all  
11 consistent with her description of the events that transpired.  
12 So it's not a he said/she said.

13 And as far as what's been presented today, there's no  
14 evidence rebutting the fact circumstances of the offense.  
15 It is truly what the victim has said, what the agent -- his  
16 follow-up as far as the investigation for search warrant,  
17 et cetera.

18 And [inaudible] they referred to the strong [inaudible] of  
19 family in Florida. In all the affidavits, the only thing I  
20 ever saw was someone who has known the family for 35 years.  
21 Other than that, they don't establish how long they've  
22 [inaudible]. They say several, several years. "Several" can  
23 mean anything.

24 And it also -- Mr. Lara emphasized that there is no flight  
25 risk. Your Honor, this defendant has absolutely no ties to



1 Wyoming, absolutely none. And being in Florida I think would  
2 lend itself to a lot of potential ways that he could leave the  
3 country. And, therefore, the government maintains that  
4 detention is the best thing in this case.

5 THE COURT: Okay. Thanks, Ms. Garcia. Just one follow-  
6 up question. There's no presumption in this case; is that  
7 correct? The victim here was not a minor; is that right?

8 MR. LARA: That's correct, Your Honor.

9 MS. GARCIA: Other than the --

10 THE COURT: Go ahead.

11 MS. GARCIA: [Inaudible], Your Honor. Just that  
12 [inaudible] there is the range of punishment. And this -- the  
13 kidnapping is up to life.

14 THE COURT: Okay. But --

15 MS. GARCIA: [Inaudible].

16 MR. LARA: I just wanted to clarify one --  
17 just one point.

18 MS. GARCIA: -- [inaudible] factor.

19 THE COURT: Go ahead, Mr. Lara. Go ahead.

20 MR. LARA: Just one point, Judge. Mr. Smith has been  
21 enlisted in the Navy since May of 2019. It's not something that  
22 he just woke up one day in January and decided to do it. He's  
23 been in the Navy. As soon as he graduated, he enlisted. And all  
24 of the trips that he's taken, he's taken with family as well,  
25 Judge. I just don't see the issue there with the flight

1 risk, Judge.

2 THE COURT: Okay. Thank you, Mr. Lara.

3 All right. Well, I think I have --

4 MR. LARA: Thank you, Judge.

5 THE COURT: I think I have the information that I need  
6 here, thanks to all of you.

7 And look, Mr. Smith, this is -- what I said at the outset  
8 remains true; that you're entitled to the presumption of  
9 innocence in this case. And Mr. Lara has presented a very  
10 strong case for you to get bail. I have a recommendation from  
11 pretrial services that recommends against that. But he has --  
12 he has very ably, you know, attacked that recommendation.

13 But ultimately, my conclusion here is controlled or  
14 compelled in my view by the -- by the fact that there was a  
15 knife involved in this case. I think if we were to take out the  
16 weapon and the credible evidence that we heard today at the  
17 hearing about the involvement of a knife -- of a knife in the  
18 testimony from Agent Olson -- which, by the way, I credit. I  
19 find that testimony credible. That, I think, is what -- is what  
20 makes this case one that sort of pushes it over the edge.  
21 There's a number of things that play into that, but that's  
22 really the -- ultimately the thing that pushes this case for me  
23 into one where I'm not going to be able to give you a bond.

24 But I just want to emphasize that, to me, this is a very,  
25 very close case and one that I fully expect my -- where this

1 issue might be revisited by the Court in Wyoming. You know,  
2 the Court there has got to be assured with respect to your  
3 ties to Wyoming or with respect to your ability to get up to  
4 Wyoming. And so what we're -- so what we're addressing right  
5 now is what happens to you pending when you get on up to  
6 Wyoming and have an opportunity for them to take a look at  
7 this issue.

8 So I'm going to order that you be detained. I find that  
9 the government's met its burden in this case with respect to  
10 flight and dangerousness. It's two different burdens. It's a  
11 preponderance of the evidence with respect to flight, and it's  
12 clear and convincing evidence with respect to dangerousness.  
13 And much of that conclusion is informed by the nature and  
14 circumstances of the alleged offense. And at this -- at this  
15 stage -- at this stage these are just allegations, and I  
16 recognize that. But there were injuries involved. The nature  
17 of the offense is a -- is a kidnapping. It carries up to a  
18 life term of imprisonment. Obviously, your criminal history is  
19 clear. And so that would play into things as well later on.

20 But there's also, as we heard, some evidence introduced at  
21 this stage of premeditation as well. And so all of that plays  
22 into my conclusion and ultimately leads me to conclude that  
23 you'll be detained.

24 Okay. Mr. Lara, is there anything further from you, sir?

25 MR. LARA: Nothing further at this time, Judge.

1 THE COURT: Okay. Thank you, sir.

2 Ms. Garcia, anything further from you?

3 MS. GARCIA: No, Your Honor. Thank you.

4 THE COURT: Okay. All right. So, Mr. Smith, as I  
5 mentioned, you'll be held in custody, and you'll be moved on up  
6 to Wyoming where proceedings will continue. That may take a  
7 little bit of time. And, obviously, with the current crisis,  
8 we're not sure how long that's going to take. But as I  
9 mentioned, I fully expect that this issue may be revisited.  
10 Okay?

11 That's all I have. Thank y'all, everybody. You may be  
12 excused. Court will be in recess.

13 \* \* \*

14 (3:18 p.m.)  
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I, court approved transcriber, certify that the foregoing  
is a correct transcript from the electronic sound recording of  
the proceedings in the above-entitled matter.

Date: 4/24/2020 /s/ Chris Poage  
Approved Transcriber